IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6133 OF 2002

Archana Girish Sabnis .... Petitioner

versus

The Bar Council of India
and ors. ... Respondents.

Shri Y.S.Jahagirdar Sr. Advocate with P.S.Dani for the petitioner.
Shri Nitin Jamdar for Respondent no.1.
Ms. Usha Purohit for Respondent no.2.
Shri R.Rodriques with B.V. Phadnis for Respondent no.3.

CORAM; V.G. PALSHIKAR &
V.R. KINGAONKAR, JJ.

DATED; 10TH APRIL, 2006.

JUDGMENT (Per Palshikar, J.):

1. By this petition, the petitioner has prayed for quashing of the communication issued by respondent no.2, informing the petitioner that her application for enrolment as an advocate is liable to be rejected. By this communication, the petitioner was informed that the qualification of Licentiates of the Court of Examiners in Homoeopathy (L.C.E.H.) is not recognised as equivalent to graduation and therefore she cannot seek enrolment as an advocate. These communications are challenged basically on the ground that the

University of Bombay has recognised the course as equivalent to a degree of Bachelor of Aurvedic and Homoeopathic Medicines and consequently the petitioner secured admission to the course of LL.B. of the Bombay University. The Bar Council therefore could not reject her request for enrolment on the ground that the degree of LCEH is not recognised by the Bar Council of India.

2. The main contention of the petitioner is that the Bar Council of Maharashtra or Bar Council of India have no jurisdiction or authorities to decide the question of equivalence of educational qualifications and therefore their orders are not valid. It is also contended that the Bombay University having considered this as a degree equivalent to BAMS, admitted the petitioner for the three years of LL.B. course and now the petitioner cannot be denied the enrolment on the ground of non-recognistion of the degree of LCEH. It was also contended that the petitioner was not given an opportunity to put forward her case and therefore the principles of natural justice were violated and consequently the whole action is of violation of Article 14 of the Constitution. Then the submission was that this amounts to carving the right of petitioner to practice a profession and the restriction is unreasonable.

3. These contentions were opposed both by the Bar Council of Bombay and Bar Council of India and it was pointed out on their behalf that there is ample statutory authorities in the Advocate's Act and Rules framed thereunder to prescribe necessary educational qualifications for enrolment as an advocate. We have to consider this submission in the light of the provisions of law as canvased before us.

4. The Advocate's Act of 1961 prescribes the functions of the Bar Council of India and it has laid down in section 7, the various functions which the Bar Council of India has to perform. Clause (h) provides that it shall be the function of Bar Council of India to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils. Then clause (i) makes the Bar Council of India to recognise Universities whose degree in law shall be a qualification for enrolment as an advocate.

5. Section 24 of the Act provides right to practice, which lays down that a person shall be qualified to be admitted as an advocate on a State roll, if he fulfils the conditions mentioned in that section. One of the qualification necessary is a degree in law obtained after undergoing a three years course of study in law

from a recognised university. Then it is provided that he should also fulfil such other conditions as may be specified in the rules made by the Bar Council. Then section 49 prescribes general power of the Bar Council of India to make rules and the Bar Council of India may makes rules for discharging its functions mentioned in section 7 and clause (h)(i) of sub section (1) of section 49, specifically empowers the Bar Council of India to make rules prescribing minimum qualification required for admission in the course of degree in law in any recognised university. This clause was added by the amending Act of 1973 with effect from 31-1-1974. It can also make rules prescribing the standard of legal education to be observed by the University in Bombay. The Bar Council of India has, for the said purpose, framed rules in exercise of the powers under section 7(h) & (i), 24(1)(c)(iii) and (iiia), 49(1)(af),(ag) and (d), which deals with standards of legal education and recognition of advocates law for admission as advocate.

6. Section (1) speaks of five years course of law with which we are not concerned. Section (b) deals with three years degree course. It specifically provides with a degree in law obtained from any university in Bombay after 12th March 1967, shall not be recognised for the purpose of 24(1)(c)(iii) unless the conditions

are fulfilled. Condition (a) is that at the time of joining the course of instruction in law for a degree in law, the person concerned is a graduate ofa university or possesses such academic qualifications which are considered equivalent to a graduate degree of a university by the **Bar Council of India.** It is then provided that the Council shall publish by notification in the gazette of India the names of universities whose degrees in law are recognised for the purpose of enrolment.

7. It will thus be seen that the submission that the Bar Council has no authority in law to frame the rules regarding the standards of education, is unsustainable. Ample examples has existed and has been administered as about the Bar Council of India does have the power to prescribe which degree and which academic qualifications are to be considered equivalent to a graduate degree. This is an independent power and merely because the Bombay University has recognised LCEH as equivalent for BHMS, it cannot be contended or held that the Bar Council of India must recognise the same as academic qualification equivalent to a graduate degree. The first submission therefore deserves to be rejected.

8. It was then contended that the very rules provide

that the Bar Council shall publish notification in the gazette of India, the names of Universities whose degree in law are recognised. According to the learned counsel appearing on behalf of the petitioner that this clause is liable to be construed liberally to mean that the Council is bound to publish by notification, the fact that the degree which it considers as equivalent to a graduate degree, and since that is not done, the persons like the petitioner had no notice of such requirement and therefore the rejection of her application for enrolment has been wrongly rejected. We are unable to accept this submission for the reason that it is the duty of the student who choses to a particular area of education, in this case a degree in law, must know that the degree in law which he or she is acquiring or is being acquired after obtaining the graduate degree or its equivalent, has recognised by the Bar Council. The Bar Council of India has not and cannot object the acquisition of academic qualifications. The universities also may not have such objections and therefore it may treat the degrees like LCEH as equivalent to other degrees conferred by the university and permitted to study the law by such persons. The university has not restricted any person from admission to law course on this ground. There can be various reasons for seeking admission through a degree course in law. One of which can be practice of

the profession of law after obtaining the degree and a person who has such desire should have the minimum knowledge that he has acquired necessary qualifications for enrolment. In fact the question of the powers of the Bar Council of India to frame such rules, recognising the power of Bar Council to lay down for recognition of law degree or degree equivalent to a graduation, has been considered and upheld by the Supreme Court of India in the judgment in **Bar Council of India and another Vs. Aparna Basu Mallick and others reported in 1994 (2) SCC page 102.**

9. The next submission made by the learned advocate for the petitioner was violation of Article 19, the restrictions of acquiring the degree of law, after acquiring the degree equivalent to qualifications as recognised by the Bar Council of India, cannot be said to be unreasonable. The right to practice under the provisions of law by necessary qualification by proper rules cannot, as alleged, violate the fundamental right guaranteed by Article 19 of the Constitution. This submission also is therefore liable to be rejected.

10. In so far as the submission under Article 14 is concerned, it will be seen that it is the duty of the person who wants to exercise his right to practice, to find out what are the requirements to obtain that

right. If he does not know it, it cannot be said that the duty is casts on the Council to make it known to him and ask him to show cause why he should not be denied the right to practice. This ground also is baseless.

11. In the result, there is no substance in any of the contentions raised. Petition therefore fails and it is dismissed.

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